

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Jacabb Utilities, LLC for approval of
a contract with Pointe West Inc. to serve Highpointe
Development

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2008 - 133 - S

(Please type or print)

Submitted by: James S. EakesSC Bar Number: SC Bar # 1820Address: Allen and EakesTelephone: 864-224-1681PO Box 1405Fax: 864-234-8411Anderson, SC 29622

Other: _____

Email: sheilat@goldieassociates.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certificatio
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigator
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input checked="" type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

RECEIVED

FILED
MAIL / DWS

ALLEN AND EAKES

ATTORNEYS AT LAW

P.O. BOX 1405

ANDERSON, S. C. 29622

RICHARD K. ALLEN JR.*
JAMES S. EAKES*

THOMAS ALLEN (1881-1953)
RICHARD K. ALLEN (1921-1982)

* CERTIFIED CIVIL COURT MEDIATOR

TEL. (864) 224-1681
114 WEST ORR STREET
ZIP 29625
FAX (864) 231-8411

March 27, 2008

VIA - FIRST CLASS MAIL

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, SC 29210

RE: Application of Jacabb Utilities, LLC for approval of a contract with Pointe West, Inc., to serve Highpointe Development.

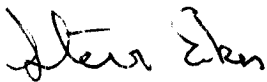
Dear Mr. Terreni:

Enclosed for filing are the original and ten (10) copies of the Application of Jacabb Utilities, LLC in the above reference matter. I would appreciate your acknowledging receipt of this document by date-stamping the extra copy of this letter that is enclosed and returning it to me via first class mail.

By copy of this letter, I am serving the Office of Regulatory Staff and enclose a certificate to that effect. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

ALLEN & EAKES



James S. Eakes
Attorney at Law

Enclosure

cc: Dukes Scott, Executive Director, ORS
Stephen R. Goldie, Jacabb Utilites, LLC

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2008-_____-S

IN RE:

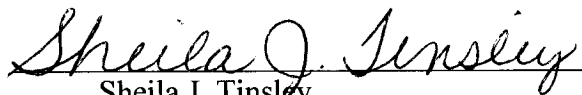
Application of Jacobb Utilities, LLC for
approval of a contract with Pointe West
Inc., to serve Highpointe Development

CERTIFICATE OF SERVICE

_____)
)
)
)
)
)

This is to certify that I have caused to be served this day one (1) copy of the
Application by placing same in the care and custody of the United States Postal Service
with first class postage affixed thereto and addressed as follows:

Dukes Scott
Office of Regulatory Staff
Post Office Box 11263
Columbia, SC 29211



Sheila J. Tinsley

Seneca, South Carolina

This 28 day of March 2008

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2008-_____-S

IN RE:

Application of Jacabb Utilities, LLC for
approval of a contract with Pointe West
Inc. to serve Highpointe Development

APPLICATION

Jacabb Utilities, LLC ("Applicant" or "Utility") hereby submits a contract between it and Pointe West, Inc. ("Developer") for consideration by this Honorable Commission under Vol. 26 S.C. Code Ann. Regs. R.R. 103-541 (Supp.2007). In support of this Application, Applicant would respectively show as follows:

1. Applicant is a public utility currently authorized to operate water and wastewater systems under the jurisdiction of the SC Public Service Commission ("Commission") in Oconee County, as well as certain other counties in this state. Its corporate charter is presently on file with the Commission and an appropriate bond has been posted with same.
2. The Applicant seeks approval of an agreement for sewer services entered into between Applicant and the Developer dated March 26, 2008 ("Agreement"), a copy of which is attached hereto and incorporated herein by reference as Exhibit "A". Applicant will provide service to the proposed development pursuant to all of the terms, conditions, rates, and charges set forth in its existing rate schedule as are on file with this Commission. Applicant respectfully requests that the Commission act expeditiously, to

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the extent necessary, to grant the approval requested before May 1, 2008, in order that the Applicant may timely meet the business plans and objectives of both the Applicant and Developer.

3. Pursuant to this agreement, Applicant proposes to serve Highpointe Development which will consist of approximately one thousand and two hundred (1200) single and multi-family residences. The Agreement provides, *inter alia*, that Developer will construct all of the necessary sewer facilities ("Facilities") required to serve the Property, acquire all necessary easements and rights-of-way ("Easements") and convey such Facilities and Easements to Applicant. Performance of the Agreement is conditioned upon its approval by this Commission.

4. No other private utility is authorized to serve the proposed development.

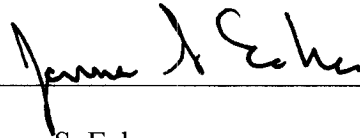
5. Pursuant to Article II, §13 of the Agreement, Applicant has agreed to reserve adequate sewer capacity for up to one thousand and two hundred (1200) residential or equivalent number of commercial wastewater connections located within the Property. Further, the terms of this contract allow the Developer to expand the Facilities for additional units and Applicant has agreed to allow the additional units to connect and discharge into the Facilities.

6. Applicant submits that the public convenience and necessity will be served by the approval of this Agreement. Applicant further submits that no hearing in this matter is required.

7. All correspondence and communications regarding this matter should be sent to the undersigned.

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WHEREFORE, having fully set forth its Application, Applicant prays that the Agreement, be approved, that a hearing on the within matter be waived or review of the within application be expedited, and that Applicant be granted such other and further relief as the Commission may deem just and proper.



James S. Eakes
Allen and Eakes
PO Box 1405
Anderson, SC 29622
(864) 224-1681

Attorney for Applicant

Anderson, South Carolina
This 26th day of March 2008

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EXHIBIT "A"

**Agreement for Sewer Services
Pointe West, Inc.**

AGREEMENT FOR SEWER SERVICES
POINTE WEST, INC.
OCONEE COUNTY, SC

This Agreement is entered into this 36 day of March, 2008 by and between Pointe West, Inc, (hereinafter referred to as "Developer"), and Jacabb Utilities, LLC, a South Carolina corporation (hereinafter referred to as "Utility").

WITNESSETH

WHEREAS, Developer is the owner of or is duly authorized to act on behalf of the owners of certain real estate located off of W. Cherry Road in Oconee County, South Carolina, hereinafter referred to as the "Property" (see "Exhibit 1"); and,

WHEREAS, Developer desires to develop said property which will contain approximately one thousand and two hundred (1200) single and multi family residences from which the total sewage flow would not exceed 500,000 gallons per day (gpd) based on the South Carolina Department of Health and Environmental Control (SC DHEC) unit contributory guidelines; and,

WHEREAS, Utility is a public utility engaged in the business of furnishing sewer services to the public in its designated areas located in South Carolina, and subjected to Section 58-5-210 of the Code of Laws of S.C., 1976 which provides: "That the Public Service Commission, is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, observed and followed by every public utility in this State, and the State hereby asserts its rights to regulate the rates and services of every public utility as herein defined." The Utility desires to have constructed and installed, and the Developer desires to construct and install, the wastewater collection facilities to serve the Property subject to the terms and conditions of this Agreement; and

WHEREAS, Developer desires Utility to provide wastewater utility service within the Property and Utility desires to provide wastewater utility service according to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

Representations and Warranties of Developer

Developer represents and warrants that:

1. Developer is the owner of or is duly authorized to act on behalf of the owners of the Property; and,
2. Developer will cooperate fully with the Utility in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with the construction and installation of the Facilities contemplated by this Agreement; and,
3. Developer will convey to the Utility or otherwise vest in the Utility such right, title and interest in and to such real estate as may be reasonably necessary to permit the Utility to carry out the terms and conditions of this Agreement; and,

4. Developer will convey to Utility or provide by recorded subdivision plats such easements or rights of way as the Utility may reasonably require for the Utility's performance of its obligations under this Agreement. Any such plats, conveyances or licenses will be in form reasonably satisfactory to Utility's legal counsel.

ARTICLE II

Obligations and Construction of Facilities by Developer

1. Facilities

- Developer shall construct and install all necessary wastewater collection facilities to serve the Property, including but not limited to manholes, lift stations (with on-site backup generators), force mains, odor control devices, modifications to the existing Wastewater Treatment Plant (WWTP), and other facilities as are reasonably required to provide adequate wastewater services (herein referred to as the "Facilities"). Wastewater collection mains will have a minimum diameter of eight (8) inches except where otherwise approved by Utility. Developer shall interconnect the wastewater facilities to Utility's wastewater system as determined by Utility.
2. All materials used by the Developer for said Facilities shall be first-class, and suitable for the uses made thereof. Developer guarantees all construction, materials, workmanship, and the trouble-free operation of the Facilities (or any portion of the Facilities) for one year after the Facilities (or such portion of the Facilities) are placed in service.
 3. All Facilities existing, constructed, and installed by Developer pursuant to this Article II shall be modified, constructed, and installed without cost or expense to Utility.
 4. All plans, specifications and construction of the Facilities shall be in accordance with applicable standards, requirements, rules and regulations of all governmental bodies and regulatory agencies which may have jurisdiction thereover, and shall have received the written approval of Utility before construction is begun, which approval shall not be unreasonably withheld or delayed.
 5. Developer shall save and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur in the course of the performance of the construction of the Facilities by Developer or by anyone acting on Developer's behalf, or under Developer's supervision and control, including but not limited to claims made by employees of Developer, and Developer shall, at its own cost and expense, pay all costs and other expenses arising therefrom, or incurred in connection therewith, including reasonable attorneys' fees.
 6. Developer shall obtain, with cooperation from Utility, all requisite permits and zoning and other approvals and all else required to construct or modify the Facilities.
 7. All of the Facilities installed by Developer pursuant to this Agreement shall become the property of Utility as installed, with the exception of the residential service lines for which each residential unit shall retain ownership and maintenance responsibility. Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility as necessary or desirable in its opinion to ensure its ownership of, ready access to, and operation and maintenance of the Facilities. Developer shall furnish Utility with lien waivers in a form reasonably satisfactory to Utility's counsel from Developer and from all suppliers, subcontractors and all others who furnish labor, equipment, materials, rentals, or who perform any services in connection with Facilities construction herein. Developer agrees to provide to Utility documentary evidence, in form satisfactory to Utility, sufficient to establish the original cost of the Facilities. Utility shall have, at all times, all right, title, and interest in and to the Facilities.

8. Developer shall, prior to the transfer to Utility of the Facilities, grant permanent, assignable easements satisfactory to Utility, authorizing Utility to own, operate and maintain the Facilities throughout the Property and providing reasonably adequate rights of access and working space for such purposes.
9. Developer shall, upon transfer to Utility of the Facilities, provide to Utility as-built drawings, and all other information reasonably required to operate, maintain, and repair the Facilities.
10. Developer shall not have the right to connect individual lot service connections to the Facilities until such time as the Facilities have been formally accepted by the Utility, written approvals have been received from all governmental bodies and regulatory agencies which may have jurisdiction thereover, and all applicable connection fees have been paid.
11. All connections must be inspected by the Utility prior to backfilling and covering of any pipes. Written notice to the Utility requesting an inspection of a connection shall be made at least forty-eight (48) hours in advance of the inspection, excluding weekends and official Utility holidays.
12. Should the Developer fail to comply with the foregoing inspection provisions, Utility may refuse service to a connection until such time as the appropriate inspections have been completed.
13. Upon Developer's satisfaction of its obligations under this Agreement, Utility agrees to reserve adequate utility capacity for up to one thousand and two hundred (1200) residential or equivalent number of commercial wastewater connections located within the Property. When additional flow is needed or if relocation of facilities is desired by the Developer, the Wastewater Treatment Plant expansion or relocation must be completed at the Developer's expense.

ARTICLE III

Representations and Warranties of Developer

1. Neither Developer nor any entity or individual affiliated with Developer has executed or will execute any agreement with any lot purchaser in the Property, or any other parties or made any representations to any such purchasers or other parties where under such purchaser or other parties have acquired any interest in Facility to be installed under this Agreement.

ARTICLE IV

Utility Services, Connection Fees, Rates and Charges

1. Upon installation of the Facilities, Utility agrees to supply all customers within the Property with adequate and customary sanitary sewer service, and to operate, maintain and repair all Facilities as indicated herein, after acceptance by Utility and issuance of operational approvals by all regulatory authorities.
2. Upon the WWTP becoming operational, Developer agrees to pay Utility an availability fee in the amount of fifteen dollars (\$15.00) per month/per unit for 331 units. Once a unit is sold or rented, the owner or resident will be responsible for the payment for sewer service. Once sewer services are used by a unit, no availability fee shall be charged for that unit and the current tariff rate will be charged.

In the event that the project is modified or cancelled, the Developer will still pay the availability fees for the 331 units, less those sold or rented. If additional units are added to the system, beyond the 331 units, no additional availability fees will be charged once 331 are rented or sold.

The Home Owners Association (HOA) will send Jacabb Utilities notification when a unit is rented or sold with the billing name, address and telephone number for that residence. The HOA will receive a monthly statement for the availability fees.

ARTICLE V

Commission Approval

1. Within thirty (30) days following the execution of this Agreement, Utility will file a petition with the Commission requesting approval of this Agreement, if necessary. All terms and conditions contained herein are subject to Utility receiving said approvals from the Commission.

ARTICLE VI

Transfer of Utility Service Provider

1. Developer will have the option to assign the Facility to another entity providing that it notifies the Utility 180 days before such transfer and pays the Utility for all of its costs incurred for which Utility has not been previously compensated. Any transfer must be approved by SCDHEC, ORS and PSC.

ARTICLE VII

General

1. Except as provided in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, acts or failure to act, decisions or order or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.
2. Developer acknowledges that Utility's obligation to provide utility service is expressly conditioned upon the parties' mutual understanding that Utility has no obligation to install, upgrade or expand any of the wastewater treatment facilities to serve additional residential or commercial units at the property.
3. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquished on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
4. The representations, warranties and agreements contained herein shall survive, and continue in effect. Utility agrees to indemnify Developer, its successors and assigns, and hold Developer harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentations or breach of any representation, warranty or agreement on the part of Utility under this Agreement; Developer agrees to indemnify Utility, its successors and assigns, and hold it and them harmless against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty, or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer.
5. This Agreement sets forth the complete understanding between Developer and Utility, and any amendments hereto to be effective must be made in writing.

6. Notices, correspondence and invoicing required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Utility: Jacabb Utilities, LLC
210 W. North Second Street
Seneca, SC 29678
ATTN: Steve Goldie
Managing Owner

If to Developer: Pointe West, Inc.
391 College Avenue
Suite 406
Clemson, SC 29631
ATTN: Tom Winkopp, President

Delivery when made by registered or certified mail shall be deemed complete upon mailing. Delivery by overnight courier shall be deemed complete when delivered.

7. This Agreement may not be assigned by Developer without the written approval of Utility, which approval shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
8. This Agreement shall be governed by the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties hereto have set their seals the day and year above first written.

Jacabb Utilities, LLC

By: 

Its: Member

Attest:



Pointe West, Inc.

By: 

Its: President

Attest:



EXHIBIT 1

VICINITY MAP - NOT TO SCALE

